

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:	:	Chapter 11
Circuit City Stores, Inc., et al.,	:	Case No. 08-35653 (KRH)
Debtors.	:	

**RESPONSE OF KELLY BREITENBECHER TO DEBTORS' FIFTY-EIGHTH
OMNIBUS OBJECTION TO CLAIMS (RECLASSIFICATION OF CERTAIN
MISCLASSIFIED CLAIMS TO GENERAL UNSECURED, NON-PRIORITY CLAIMS**

COMES NOW Kelly Breitenbecher, ("Ms. Breitenbecher"), by the undersigned counsel, and for her response to *Debtors' Fifty-Eighth Objection to Claims (Reclassification of Certain Misclassified Claims to General Unsecured, Non-Priority Claims)* ("Objection"), and states as follows:

1. On or about January 29, 2009, Ms. Breitenbecher filed a claim with Debtor's claims agent, Kurtzman Carson Consultants, in the total amount of \$1,046,083.00. On information and belief, the claim has been assigned claim number 7786 (the "Claim"). The Claim asserted \$300,000.00 as entitled to administrative expense status, and \$746,083.00 as general unsecured. A copy of the Claim is attached hereto and incorporated in full by this reference as **Exhibit A**. The Debtor's Objection seeks to reclassify the administrative portion of the Claim to a general unsecured claim.¹

¹ On or about June 29, 2009, subsequent to the filing of the claim subject to this 58th objection, Ms. Breitenbecher filed an administrative expense claim in the amount of \$1,502,166.00. On information and belief, the subsequent administrative claim was assigned claim number 13936 by Debtors' claims agent. Claim number 13936 includes the \$300,000.00 asserted as an administrative expense in this claim 7786. The Debtor, in its 56th Omnibus Objection, has objected to claim 13936 in its entirety. Contemporaneously with the filing of this response to Debtor's 58th Omnibus Objection, Ms. Breitenbecher has also filed a response to Debtors' 56th Omnibus Objection.

2. The administrative expense portion of the Claim is based upon a special cash retention award (the “Award”). A copy of the letter agreement for the Award is attached to the Claim. The initial vesting date under the Award was January 1, 2009. Ms. Breitenbecher was employed by the Debtors until April, 2009. Thus \$300,000.00 of the Award fully vested on January 1, 2009.

3. As the vesting of the Award was post petition, and Ms Breitenbecher was employed as of the vesting date, Ms. Breitenbecher asserts this Award is part of her wages and/or salary, and thus pursuant to 11 U.S.C. §503(b)(1)(A)(i) is entitled to administrative expense status. In that at least a portion of the Award would have accrued post petition, Ms. Breitenbecher should be allowed, at a minimum, to a pro rata amount of the Award for her post-petition services as an administrative expense. See In re Hechinger Investment Company of Delaware, 298 F.3d 219 (3rd Cir. 2002); In re Lason, 309 B.R. 441 (Bankr. D. Delaware 2004).

4. Without waiving the above, Ms. Breitenbecher asserts, in the alternative, the Award has priority under 11 U.S.C. § 507(c)(4), in that the Award was earned within 180 days before the date of the bankruptcy petition, or cessation of debtors’ business. Cessation of Debtors’ business would be upon the order granting liquidation of the company, or upon completion of liquidation.

5. The person with knowledge of this claim is Kelly Breitenbecher, as identified above. Documents supporting the claim were attached to the claim as filed.

6. There were certainly other employees of Circuit City familiar with, or having knowledge of, the Award, and Circuit City may have documents pertaining to the Award. As such, Ms. Breitenbecher reserves her right to supplement this Response in advance of any final hearing on the Objection.

WHEREFORE, Kelly Breitenbecher respectfully requests the Court overrule the Objection, and allow Ms. Breitenbecher's claim as filed, and grant such further relief as is just and proper under the circumstances.

Respectfully Submitted,

KELLY BREITENBECHER

By Counsel

/s/ William A. Gray

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2009, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and was mailed on November 16, 2009, by U.S. Mail, first class, postage prepaid, to all persons on the below Service List:

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